

CAROL PRICE DILLINGHAM, LLC
Attorney and Counselor at Law
1711 S. Pickard Avenue
Norman, OK 73072
Phone (405) 826-7160
Fax (405)292-5465



June 26, 2009

Hon. Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

VIA FEDEX

Re: Petition for Reconsideration – *John Kessler*

Finance Docket No. 35164
BNSF Railway Company – Petition for Declaratory Order

225283

Docket No. AB-6 (Sub No. 430X)
BNSF Railway Company – Abandonment Exemption in Oklahoma County, OK

225284

Dear Secretary Quinlan:

Attached for filing in the above-referenced cases are the Comments of Oklahomans for New Transportation Alternatives Coalition (ONTRAC).

Service upon the parties has been made as noted in the Certificate of Service.

If you have any questions concerning the Comments, please let me know.

Respectfully,

A handwritten signature in cursive script, appearing to read 'Carol Price Dillingham'.

Carol Price Dillingham

ENTERED
Office of Proceedings

JUN 29 2009

Att.

Cc: Kristy D. Clark
Michael D. Clover
Mary Francis
Eric M. Hocky
Fritz R. Kahn
Edwin Kessler
Cindy S. Rosenthal
Robert M. Waldrop

Part of
Public Record



**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**FINANCE DOCKET NO. 35164
BNSF RAILWAY COMPANY – PETITION FOR DECLARATORY ORDER**

**DOCKET NO. AB-6 (SUB NO. 430X)
BNSF RAILWAY COMPANY – ABANDONMENT EXEMPTION
IN OKLAHOMA COUNTY, OK**

PETITION OF JOHN KESSLER FOR RECONSIDERATION

**COMMENTS
OF
OKLAHOMANS FOR NEW TRANSPORTATION ALTERNATIVES COALITION
(ONTRAC)**

**Carol Price Dillingham, LLC
Attorney and Counselor at Law
1711 S. Pickard Avenue
Norman, OK 73072
Phone (405) 826-7160
Fax (405) 292-5465
OBA #11078
Attorney for ONTRAC**

Dated June 26, 2009

STB FINANCE DOCKET NO. 35164
BNSF RAILWAY COMPANY – PETITION FOR DECLARATORY ORDER

STB DOCKET NO. AB-6 (SUB NO. 430X)
BNSF RAILWAY COMPANY – PETITION FOR DECLARATORY ORDER

JOHN KESSLER - PETITION FOR RECONSIDERATION



COMMENTS
OF
OKLAHOMANS FOR NEW TRANSPORTATION ALTERNATIVES COALITION
(ONTRAC)

Oklahomans for New Transportation Alternatives Coalition (“ONTRAC”) is a party in Finance Docket No. 35164, having filed a reply to BNSF’s Supplement Comments in that proceeding on November 5, 2008 in which its interest in the proceeding was described (at 2). On May 20, 2009, the Board issued its decision in Finance Docket No. 35164 and Docket No. AB-6 (Sub No. 430X) and granted BNSF an abandonment exemption in these matters. On June 8, 2009, Thomas F. McFarland, P.C. filed with the Board a Petition for Reconsideration of the Board’s decision on behalf of John Kessler.

In its decision, the Board concluded: *“As BNSF notes, there is no...derogation of overhead service as a result of the project...ONTRAC argues that the current overhead service is not as efficient and that it interferes with traffic, but has not shown any significant adverse effect on overhead traffic...Thus...claims that the project will have adverse effects on shippers are without merit.”*

In a Reply filed with the Board in Finance Docket No. 35164 on February 11, 2009, ONTRAC presented evidence in the form of a verified statement from Marion F. Hutchison II describing significant freight traffic conflicts and delays as a result of the abandonment of the Middle Segment of the Chickasha Subdivision and the rerouting of overhead service onto the

Packingtown Lead. A new verified statement from Mr. Hutchison describing those same conflicts and delays is submitted herewith (see Exhibit 1), along with photographs documenting the same (see Exhibit 2), as evidence that the stated abandonment and rerouting actions are having significant adverse impacts on overhead traffic. The new verified statement includes new information concerning Mr. Hutchison's discussion with the engineer of one of the affected trains described in Exhibit 1.

The evidence presented herein clearly demonstrates that the Packingtown Lead is an inferior, dysfunctional alternative to the Middle Segment of the Chickasha Subdivision and that overhead traffic which previously moved without interruption by way of the direct through service provided by the Middle Segment is being adversely affected, as it must now contend with frequent freight traffic conflicts and lengthy delays due to the abandonment of the Middle Segment and rerouting of service onto the Packingtown Lead.

In its decision, the Board also concluded: *"Overhead service will likewise continue to be made available, and has been provided without shipper complaint since traffic has been shifted to move over the Packingtown Lead."*

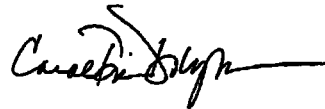
As stated by Mr. Fritz Kahn in a Reply filed with the Board in these matters on February 9, 2009 on behalf of Bio Energy Wellness Center and North American Transportation Institute, *"BNSF insists that no shippers on the 1.54 mile line have lost service as a result of its de facto abandonment but that is altogether irrelevant. The abandoned line is a critical segment of BNSF's line of railroad extending between Quanah, Texas and Springfield, Missouri and neither ODOT nor BNSF has made any efforts to address what the affect of the abandonment of the 1.54 mile segment has been on the shippers and consignees situated on and making use of the railroad line between Quanah and Springfield."*

The lack of shipper complaint regarding the adverse affects to overhead service described above does not mean shippers are not being significantly impacted as a result of the abandonment and rerouting actions. Due to the failure of the Board to require BNSF to prepare an Environmental Impact Statement, public notice and hearings in these matters did not take place and the numerous shippers affected by the actions were not contacted and provided an opportunity to submit comments. As a result, they would have no knowledge of the situation or an avenue for expressing their concerns in these matters.

Given the significant amount of controversy and opposition to the abandonment and rerouting actions, as well as the substantial amount of evidence supporting that opposition, the Board's decision to grant an abandonment exemption in these matters and not require BNSF to prepare an Environmental Impact Statement to address the numerous potential significant environmental impacts resulting from these actions is a critical failing under the National Environment Policy Act.

ONTRAC respectfully requests the Board to find in favor of Mr. Kessler's Petition for Reconsideration and to rescind BNSF's abandonment exemption and require BNSF to prepare an Environmental Impact Statement in full compliance with the National Environmental Policy Act.

Respectfully submitted,
ONTRAC
By its attorney,



Carol Price Dillingham
OBA #11078

Carol Price Dillingham, LLC
1711 South Pickard Avenue
Norman, Oklahoma 73072
Phone (405) 826-7160
Fax (405) 292-5465

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of June 2009, a copy of the foregoing Comments of Oklahomans for New Transportation Alternatives Coalition (ONTRAC) was mailed by first class mail, postage prepaid, to the following parties of record:

Kristy D. Clark
BNSF Railway Company
P.O. Box 961039
Fort Worth, TX 76131-2828

Michael D. Clover
Shawnee Economic Development Foundation
128 N. Broadway
Shawnee, OK 74801

Mary Francis
850-C Cardinal Creek Condos
Norman, OK 73072-8016

Eric M. Hocky
Thorp Reed & Armstrong, LLP
One Commerce Square
2005 Market Street, Suite 1910
Philadelphia, PA 19103

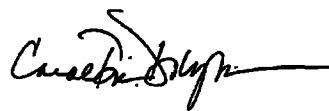
Fritz R. Kahn
Fritz R. Kahn PC
1920 N Street NW, 8Th Floor
Washington, DC 20036-1601

Edwin Kessler
1510 Rosemont Drive
Norman, OK 73072

CERTIFICATE OF SERVICE (Continued)

Cindy S. Rosenthal
The City Of Norman
P. O. Box 370
Norman, OK 73069

Robert M. Waldrop
Oscar Romero Catholic Worker House
1524 NW 21st
Oklahoma City, OK 73106

A handwritten signature in black ink, appearing to read "Carol Price Dillingham", written over a horizontal line.

Carol Price Dillingham

EXHIBIT 1

Before the

SURFACE TRANSPORTATION BOARD

**FINANCE DOCKET NO. 35164
DOCKET NO. AB-6 (SUB NO. 430X)**

PETITION FOR RECONSIDERATION – JOHN KESSLER

**VERIFIED STATEMENT OF
MARION F. HUTCHISON II**

My name is Marion F. Hutchison II. I am a member of Oklahomans for New Transportation Alternatives Coalition (OnTrac). I am over the age of 18 and legally qualified to make this Statement. My contact information is: Phone: 405-205-2458
Address: 5220 Montrose Circle, Norman, OK 73072.

1. Between the approximate hours of 11:00 am and 1:00 pm on January 9, 2009, I observed and photographed a significant delay of overhead rail traffic affecting multiple trains attempting to transfer onto the BNSF Railway Company's (BNSF) Red Rock Subdivision in Oklahoma City, Oklahoma.
2. During that time, I observed and photographed a freight train at a standstill on the Red Rock Subdivision (see Photo 1 and 2 in Exhibit 2). The train was approximately three-quarters of a mile in length and it occupied the Red Rock Subdivision from several hundred yards north of the Shields Spur connection to several hundred yards south of the Packingtown Lead connection. The train was simultaneously blocking access to the Red Rock Subdivision by overhead traffic eastbound on the Packingtown Lead and by overhead traffic southbound on the Shields Spur, which provides access to and from the Chickasha Subdivision east of the Red Rock Subdivision. The train was at a standstill for more than two hours.
3. During that time, I also observed and photographed an eastbound Stillwater Central Railroad (SLWC) freight train at a standstill on the Packingtown Lead just west of Walker Avenue (approximately one-half mile west of the Red Rock Subdivision connection) (see Photo 3 in Exhibit 2). The train was blocked from transferring onto the Red Rock Subdivision by the train described above in paragraph 2. The SLWC train was at a standstill and delayed for more than two hours.
4. During that time, I spoke with the engineer of the SLWC freight train described above in paragraph 3. The engineer stated that SLWC trains were frequently experiencing delays of several hours as a result of the rerouting of rail service to the Packingtown Lead. The engineer

EXHIBIT 1 (Continued)

stated that on one occasion they had to shut down for five hours waiting on freight traffic to clear from the Red Rock Subdivision. The engineer stated that prior to the abandonment of the Chickasha Subdivision (Middle Segment) and rerouting of overhead service onto the Packingtown Lead, freight traffic conflicts and delays were nonexistent. The engineer stated there are more than twenty different overhead freight shippers affected by the delays.

5. During that time, I further observed and photographed a southbound BNSF freight train at a standstill on the Shields Spur just north of where it connects to the Red Rock Subdivision (see Photo 4 in Exhibit 2). The train was blocked from transferring onto the Red Rock Subdivision by the train described above in paragraph 2. The train was at a standstill and delayed for more than two hours.

6. The three trains described above in paragraphs 2, 3 and 5 were simultaneously at a standstill.

7. The two trains described above in paragraphs 3 and 5 were simultaneously blocked and delayed from transferring onto the Red Rock Subdivision for more than two hours.

8. The photographs attached in Exhibit 2 are the photographs described in paragraphs 1, 2, 3 and 5 above.

VERIFICATION

I hereby verify under penalty of perjury that the foregoing Verified Statement is true and correct to the best of my knowledge and recollection.

Executed this 26th day of June 2009.

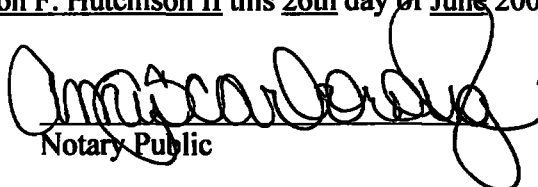


Marion F. Hutchison II

ACKNOWLEDGEMENT

State of Oklahoma)
) SS.
County of Cleveland)

Subscribed and sworn before me by Marion F. Hutchison II this 26th day of June 2009.



Notary Public

My Commission Expires:

July 27, 2010
(Seal)

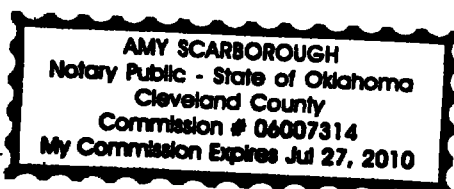


EXHIBIT 2

PHOTO 1



PHOTO 2

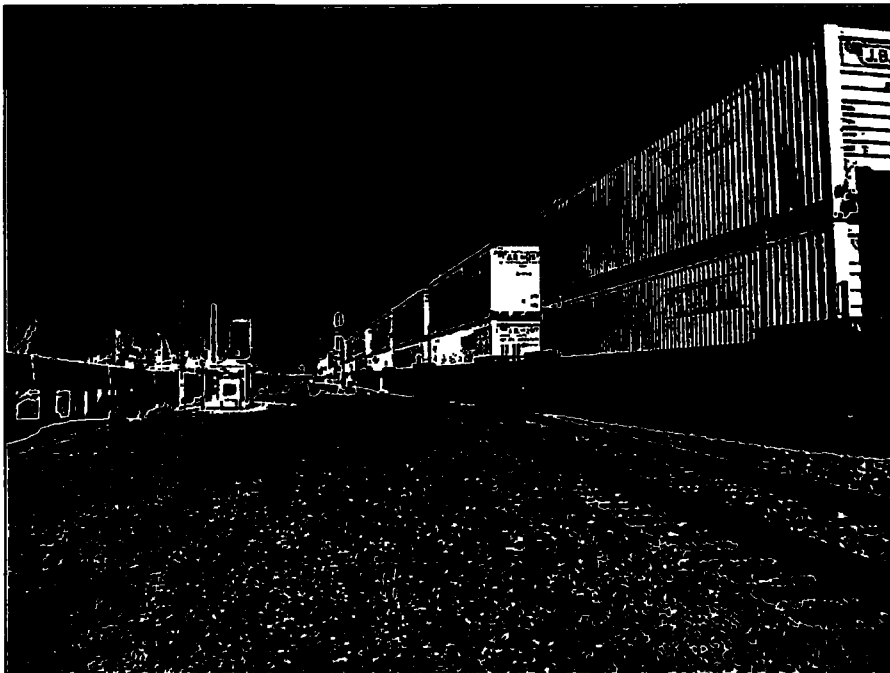


EXHIBIT 2 (Continued)

PHOTO 3



PHOTO 4

